

screening to comply with the requirements of this section. Staff finds this to be in compliance with the screening requirements of this section.

**§10-2145(b) (6)**

The area adjoining street rights-of-way shall contain a minimum street protective yard of twenty (20) feet wide as measured perpendicular to the public street rights-of-way. This street protective yard shall comply with the requirements of subsections 10-2082.5

In addition to this street protective yard, a transitional protective yard which contains the same plantings required in §10-2082.9 for low impact uses shall be installed within all the yard areas required in subparagraph (4) above, which adjoin a lot containing a dwelling, congregate care or congregate living structure, or zoned residential district. The installation of any fence, wall, planting or earthen berm shall not reduce or lessen this requirement. In instances where a telecommunication tower is locating on a developed lot in accordance with §10-2088 of this Code, and the existing physical development on the lot precludes the full installation of the aforementioned protective yards, the City Council may approve an alternate method of compliance as set forth under the conditions of §10-2082.4 of this Code.

**FINDING:**

Applicant states the required street yard will be provided as alternate means of compliance as one of three options:

1. Plant six (6) 4" caliper oak trees in the Western Boulevard right-of-way, contingent upon North Carolina Department of Transportation approval of an encroachment agreement.
2. Donate an amount equal to two (2) times what it would cost to install six (6) 4" caliper oak trees to the Urban Street program.
3. Remove 20 feet of parking lot along western Boulevard and plant six (6) 2" caliper oak trees.

Staff finds that any one of these options are adequate to meet the requirements of this section provided that a option is approved prior to issuance of building permits for the tower.

**§10-2145(b) (7)**

The output power from the tower shall not exceed federally approved levels for exposure to electronic magnetic force (EMF).

**FINDING:**

Applicant states that the power output will not exceed federally approved levels for EMF exposure.

**§10-2145(b) (8)** If determined by the City that the proposed tower is situated in a location which will benefit the City's telecommunications systems, then, the tower shall be engineered and constructed to accommodate the additional telecommunicating equipment beneficial to the public system.

**FINDING:** Applicant states that the tower is to be designed to accomodate additional users. They also state that should the City of Raleigh relocate its telecommunications systems, the proposed tower will be able to accomodate a reasonable number of facilities.

**§10-2145(b) (9)** If the proposed tower is located on property that is zoned a residential district at the time of the special use hearing, the tower shall be either less than seventy-five (75) feet in height or located no closer than one thousand and five hundred (1,500) feet (determined by straight line and not street distance) to tower greater than seventy-five (75) feet in height which was constructed after August 6, 1995.

If the proposed tower is located on property that is zoned a nonresidential district at the time of the special use hearing, the tower shall be either less than one hundred (100) feet in height or located no closer than one thousand (1,000) feet to a tower greater than one hundred (100) feet in height which was constructed after August 6, 1995.

The City Council may approve the construction of a tower which does not meet the above standards if evidence is provided which demonstrates that reasonable effort has been made to lease space on an exisitng tower or that no existing tower will technically satisfy the applicant's specific needs.

**FINDING:** There are no towers constructed after August 6, 1995 within 1500 feet of this site.

**§10-2145(b) (10)** If the tower is located within an Hisoric Overlay District or Metro Park Protection Overlay District, the tower does not exceed the maximum allowable building height allowed within the overlay zoning district.

**FINDING:** The location of this tower is outside the boundaries of any Historic Overlay District or Metro Park Protection Overlay District.

**§10-2145(b)(11)** If the tower is between one hundred (100) feet and one hundred and eighty (180) feet in height, the tower shall be engineered and constructed to accommodate a minimum of on two (2) telecommunication providers. If the tower exceeds a height of one hundred and eighty (180) feet, the tower shall be engineered and constructed to accommodate a minimum of three (3) telecommunication providers.

**FINDING:** Applicant states that this tower will be engineered to allow for co-location.

**§10-2145(b)(12)** The exterior appearance of all buildings located in any residential district look like a residential dwelling, including without limitation, pitched roof(s) and frame or brick veneer construction.

**FINDING:** Applicant states that with this tower system, it is not located within a residential district. Staff finds that this tower location is within an area zoned nonresidential with a non residential landuse.

**§10-2145(b)(13)** Associated buildings located in any residential district may not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.

**FINDING:** Staff finds that the proposed tower and current landuse is not in conflict with this section of the Code.

**§10-2145(b)(14)** The use will not be detrimental or injurious to property or improvements in the affected area.

**FINDING:** City Council may take into account testimony at the evidentiary hearing in determining the conformance of the request to this condition.

**EXHIBIT 3**

**CAPITOL BROADCASTING'S  
WAIVER OF CONFLICT OF INTEREST**

Capitol Broadcasting Company, Inc., 2619 Western Blvd., P.O. Box 12000, Raleigh, N.C. 27605

MICHAEL D. HILL  
Vice President/General Counsel  
(919) 821-8730  
Fax (919) 821-8733  
Internet:  
hillmicd@interpath.com

September 5, 1997

Thomas A. McCormick, Jr.  
City Attorney  
City of Raleigh  
Post Office Box 590  
Raleigh, NC 27602

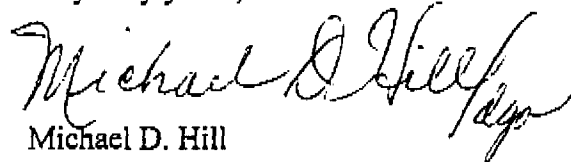
Re: Capitol Broadcasting Company Application for Special Use Permit

Dear Mr. McCormick:

Capitol Broadcasting Company hereby waives any conflict of interest that may be raised as a result of pending litigation in which Capitol Broadcasting Company and various members of the City Council are parties. Capitol Broadcasting Company hereby requests that the above-referenced matter be placed on the next City Council agenda for resolution and that the individual members of the City Council who are parties to that litigation participate in the resolution of the above-referenced matter. Capitol Broadcasting Company will not base any appeal of an adverse decision by the City Council, in whole or in part, upon any allegations of conflict of interest, appearances of impropriety, or any other reason that arises out of or in connection with the on-going litigation.

Thank you for your consideration in this regard.

Very truly yours,

  
Michael D. Hill

MDH/dgo

cc: Mr. John Greene

[LegalShare:MW6.0:CBC:McCormick.1u]

**EXHIBIT B**

**Affidavit of David Lasley**

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**AFFIDAVIT OF DAVID LASLEY**

I, David Lasley, being first duly sworn, do depose and say

1. I am a vice president and planner with Envirotek, Inc., located at 1111 Oberlin Road, Raleigh, North Carolina 27605.

2. I have been employed with Envirotek as a planner for approximately 15 years. As a planner with Envirotek, I have had many years of experience reviewing and working with City of Raleigh planning and zoning issues.

3. I have reviewed Capitol Broadcasting Company's Special Use Permit Application to construct a 300-foot lattice construction telecommunications tower at 2619 Western Boulevard, Raleigh, North Carolina.

4. In particular, I have reviewed the Special Use Permit Application in order to determine whether the proposed project complies with the Raleigh City Code, Section 10-2145, pertaining to telecommunication towers taller than 250 feet. Section 10-2145 requires Capitol Broadcasting Company to satisfy fourteen criteria, which are set out in the Code.

5. Based upon my experience as a planner, and based upon the information provided to me by Capitol Broadcasting Company, it is my opinion that Capitol Broadcasting Company's Application for a Special Use Permit does satisfy each of the fourteen required conditions for approval.

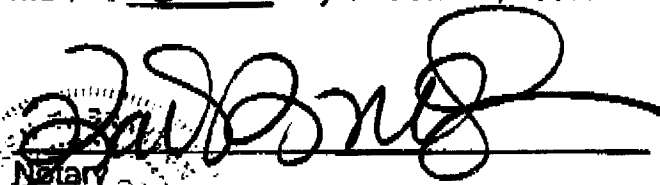
6. Therefore, it is my opinion that the subject Application meets all required conditions for approval and the City Council should grant the proposed Special Use Permit.

7. Further Affiant saith not.

This the 2<sup>nd</sup> day of October, 1997.

  
Affiant

Sworn/affirmed to and subscribed before  
me this 8<sup>th</sup> day of October, 1997.

  
Notary  
My commission expires: 5/4/00



**EXHIBIT C**

**Comments of Mid Atlantic Network, Inc.**

# MID ATLANTIC NETWORK, INC.



P.O. BOX 3300 / WINCHESTER, VIRGINIA 22604 / PHONE 540-667-2224 / FAX 540-722-3295

## **COMMENTS OF MID ATLANTIC NETWORK, INC.**

Mid Atlantic Network, Inc., licensee of Radio Station WINC-FM, Winchester, Virginia, reports herewith the difficulty it had to obtain permission from Fauquier County, Virginia, for the construction of a 150-foot tower at its remote mountain-top site to support an auxiliary antenna. The station wanted to move its auxiliary antenna to a new tower so that the station could remain on the air when tower workers climbed the main tower and the main antenna had to be disconnected to protect workers from RF radiation.

When the station applied for a building permit for the tower, the subsequent notice for a public hearing elicited a response from the Blue Mountain Property Owners Assn. Inc. (copy attached). This is a mountain resort community in adjacent Warren County. At the public hearing in Fauquier County the Blue Mountain property owners said the cancer rate in the resort was higher than normal and that excess RF radiation caused this cancer. During this process and at the request of the Blue Mountain property owners the Warren County Board of Supervisors approved a radiation study by Jules Cohen & Associates, P.C. which showed no radiation problems (newspaper report attached). Despite this report and our reporting that the FCC had preempted local government control of radiation (Mid Atlantic letter attached), the property owners persuaded Fauquier County to impose several restrictions on the use of the new tower in an attempt to reduce RF radiation (Fauquier County letter attached).

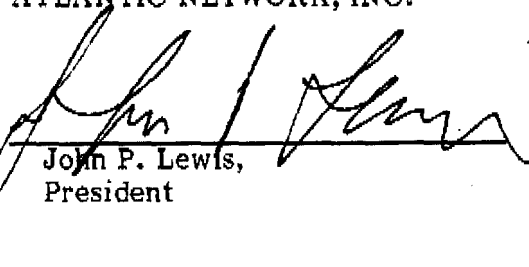
Page Two

In imposing restrictions on the use of the new tower to reduce the perceived radiation problem, Fauquier County did not make a distinction between transmitting antennas and receiving antennas. Their restrictions included "limit the number of whip antennas to no more than four," and "No satellite dishes." Also, a restriction stated, "Tower to be used for back up purposes only or if used as primary, the existing tower to be for back up only."

Respectfully submitted,

MID ATLANTIC NETWORK, INC.

By:

  
John P. Lewis,  
President

October 23, 1997

6-file

Blue Mountain Property Owners Assn. Inc.

P.O. Box 114 - Linden, Virginia 22642

RECEIVED

OCT 22 1990

Ans'd.....

October 22, 1990

Mr. Albert Goldsmith  
Director of Community Development  
and Zoning  
County of Fauquier  
40 Culpepper Street  
Warrenton, Virginia 22186

Re: Richard F. Lewis, Inc.'s request, Case No. SE90-S-18

Dear Mr. Goldsmith:

Our Association wishes to notify you of our continuing concern about the proliferation of towers on Route 638, where the Blue Mountain subdivision is located. We have watched in dismay as 14 towers have been constructed in the area without the adverse effects on property owners in the vicinity being considered.

As the result of some of our research in the last few years, we have learned that the total antennae field on Blue Mountain has never been measured for R.F. (Radio Frequency) radiation. Predictions of R.F. hazard can be made for single antenna but a field must be measured, according to the National Council on Radiation Protection and Measurements (NCRP). Since several R. F. sources are involved and biological effects of R.F. radiation are related to total energy absorbed by the body, a field consisting of different sources can have a multiplier effect. The American National Standards Institute (ANSI) recommends .4W/kg Specific Absorbtion Rate (SAR) for occupational criteria for frequencies in the range of 3MHZ-100GHZ (Source: NCRP Report No. 86 dated 4/2/86). In its 1985 report, OST Bulletin No. 65, The Federal Communications Commission (FCC) requires actual measurements to determine the impact of a new installation where there are multiple R.F. transmitters at a given location (SOURCE: National Environmental Protection Act, 1967). To measure the R.F. energy requires instrumentation and ON-OFF tests. For your information, Valley 2-Way now has 37 antennas on its tower.

Because these tests have never been done, our Association strongly objects to the construction of any additional radio towers since the adverse effects are not known.

If your review of the site and subsequent investigation of these hazards leads you to recommend approval of another tower, our Association would like for you to seriously consider the following: make your approval commensurate with an agreement that there be no net increase in RF broadcast power (no net power boosting); that WINC agree to have the new tower serve as its primary tower in order to distance the effects of radiation on nearby residences; that the planning commission require that WINC not lease space on the new tower for any additional antennas without express permission from the Fauquier County Board of Supervisors; and that WINC will notify all adjacent property owners in advance if such antennas are planned in order for owners to prepare a response.

You have already received a letter from the Warren County Administrator, Mr. Ronald George, requesting that the concerns of the property owners of Warren County be considered during your deliberations, and we urge you to honor his request. Blue Mountain is no longer an isolated wilderness; it is becoming increasingly populated by those who enjoy the peace, solitude, and clean air of the wilderness, and the proliferation of towers and antennas can have adverse health effects on these residents, as well as interfere with radio and TV reception.

Thank you for your consideration of our concerns.

Sincerely,

*Agnes MacDonald*

Agnes MacDonald, President

cc: Ronald George,  
Warren County Administrator

Blue Mountain, Inc.  
Front Royal, Va. 22630

*primary tower  
never both on  
desirable small antenna*

*Add Antennas - W.D. Co. Approval*

*FCC allows power boosts*

## temperatures

10 a.m. High	Low
72	64
Ago.....78	56
terday's official high	
rature was 87 degrees.	

## linia Temperatures

By The Associated Press

	High	Low	Pcp.
field	75	63	0.25
al	78	64	0.00
ottesville	85	66	0.01
ille	87	67	0.00
s Airpor	88	66	0.68
nburg	85	68	0.51
ort News	86	72	0.00
lk	87	71	0.00
sburg	86	72	0.00
nond	87	71	trce
oke	84	68	0.06

h: Highest temperature  
esday.

v: Lowest temperature last  
rs.

i: Precipitation last 24  
ending at 7 a.m. EST.

# Coast Rain

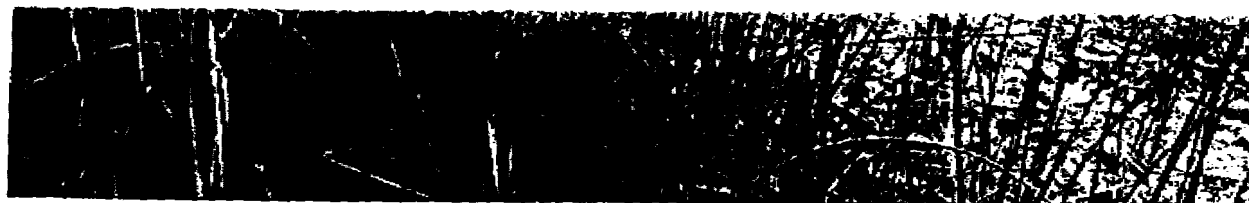
Plains, along the Pacific  
and in most of the Nor-

ernoon temperatures could  
into the 50s near Lake  
ior.

h temperature for the na-  
Wednesday was 113 degrees  
h Lake Havasu City, Ariz.,  
alm Springs, Calif.

er reports as of 5 a.m. EDT  
ospheric conditions for  
cities not available):

ast: Albany, N.Y. 60  
y; Atlanta 70; Boston 72  
rs; Buffalo 55; Charleston,  
71; Chattanooga 67; Cin-



The waters of this pond along U.S. 50 west of  
Winchester have been receding during the

drought. The cat-tails at left mark its usual em-  
bankment.

# Blue Mountain Study: No Radiation Harm

By JULI KLYCE

Star Staff Writer

FRONT ROYAL — Blue Moun-  
tain area residents are not en-  
dangered by radio-tower radiation,  
according to a report presented to  
the Warren County Board of Super-  
visors on Wednesday.

"I think we have a fairly clean  
bill of health here," said Randy  
Hodgson, the county planning  
director.

Hodgson summarized the one-  
month, 11-page study for the board  
and said the largest tower in the  
area, operated by WINC Radio of  
Winchester, emits no more than 3  
percent of the allowable radiation  
levels under Federal Communica-  
tions Commission regulations.

The study conducted by Jules  
Cohen and Associates of

Washington states in part that  
"levels of radio-frequency radiation  
at publicly accessible locations are  
well below the protection  
guideline."

Blue Mountain has 13 radio  
towers of varying types and resi-  
dents requested the study at a re-  
cent board meeting. The study cost  
about \$4,000 and officials in nearby  
Fauquier County agreed to pay  
half.

The board will send the study  
results to Blue Mountain residents  
for review.

In other business, the board;

- Awarded \$400 to Warren County  
High School junior Michael Berry,  
who is traveling to Washington next  
month for the Congressional Youth  
Leadership Council meeting.

To avoid setting a precedent of  
giving students money, the board  
specified that the grant is awarded  
only for the council meeting, which  
is held annually.

This is the first time a Warren  
County student will attend the  
meeting. Berry was chosen as one  
of 350 students from across the na-  
tion.

Rudacille said he is a model stu-  
dent who deserves the money.  
Berry has raised \$300 for the week-  
long trip, which costs about \$600.

He is the son of Mr. and Mrs.  
Terry Berry.

- Agreed to meet with Kimmins  
Recycling Corp. today to discuss  
possible joint landfill and recycling  
programs with Page County.

- Extended an emergency ordi-

less-than-happy ending for a season  
that began with promise when the  
growing season was greeted with  
mild weather. Fruit-growers still  
expect a good crop, however.

The peach crop has been ve-  
good, officials said, since the fruit  
didn't suffer severe frost during the  
early growing season, and is not  
seriously affected by heat and dry  
conditions.

nance establishing additional  
quirements for well and se-  
system permits in Skyland Estate.  
The temporary drilling and  
drainfield requirements will remain  
in effect until Nov. 15.

- Agreed to conduct a pu-  
hearing on leash laws in the E  
Ridge Mountain Estates District.

- Appointed Mary Ann Biggs  
the Lord Fairfax Planning Dist  
Commission.

- Reappointed Steve Sagar to  
Board of Building Code Appeals  
another four-year term. Superv  
Stuart L. Rudacille abstained on  
vote.

All board members attended  
meeting: Rudacille, Chair;  
Bernard L. Stokes, Patricia  
Wines, Staige F. Miller, and Se-  
Thomson.

## DAILY RECORD

### Fire Calls

Frederick County

Saturday, Aug. 31

4:42-5:08 p.m.: power line  
smoldering, Va. 259; Gore Volun-  
teer Fire Company responded.

Sunday, Sept. 1

Midnight-1:23 a.m.: field fire,  
Route 654; Gainesboro and  
Reynolds Store volunteer fire com-  
panies responded.

12:13-1:49 p.m.: accident with in-  
jury, U.S. 522 South; Stephens City  
Volunteer Fire Company respond-

5:13-6:43 p.m.: accident with in-  
jury, Doe and Hickory trails,  
Shawneeland; North Mountain Vol-  
unteer Fire Company responded.

8:42-9:03 p.m.: odor of gas, 490  
Country Park Road; Greenwood  
Volunteer Fire Company respond-  
ed.

Monday, Sept. 2

8:44-10:05 p.m.: accident with in-  
jury, Route 735; Stephens City and  
Middletown volunteer fire com-  
panies responded.

terstate 81 at Exit 82; Clearbrook  
and Greenwood volunteer fire com-  
panies responded.

4:37-6 p.m.: utility wires down,  
Route 608; Round Hill Volunteer  
Fire Company responded.

8:44-9:04 p.m.: vehicle fire, Route  
704; Gore Volunteer Fire Company  
responded.

Wednesday, Sept. 4

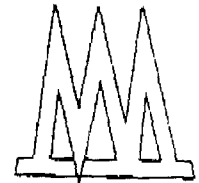
9:52-10:40 a.m.: vehicle fire, In-  
terstate 81 near Exit 82; Clearbrook  
Volunteer Fire Company respond-  
ed.

U.S. 522 South; Stephens City  
Middletown volunteer fire com-  
panies responded.

1:50-2:50 p.m.: accident with  
injury, Interstate 81 near Middle-  
town truck scales; Stephens City  
Middletown volunteer fire com-  
panies responded.

Thursday, Sept. 5

12:28-1:15 a.m.: alarm sour  
Opequon Water Reclamation  
Plant, Va. 7; Greenwood Volu-



# MID ATLANTIC NETWORK, INC.

DRAWER 3300 / WINCHESTER, VIRGINIA 22601 / TELEPHONE (703) 667-2224

November 26, 1990

Ms. Lori B. Langford,  
Chief of Planning  
Fauquier County Office of Planning  
40 Culpeper Street  
Warrenton, Virginia 22186

RE: Special Exception  
Number SE90-S-18

Dear Ms. Langford:

Pursuant to our telephone call today, enclosed is a copy of the material that I faxed to you in which the Federal Communications Commission has ruled that it has preempted state and local governments in the control of radiation. If you want additional material on this matter, I can have our communications attorney provide it for you.

The health concerns stemming from the total RF radiation on the mountain that the citizens expressed at the public hearing have no basis in fact. There is no justification for the conditions that the citizens want attached to our requested special exception. Also, I note that the citizens' conditions would be in conflict with the condition required by the Planning Commission, "that the County or other Government agency be permitted to utilize the tower for emergency communications network."

If I can provide you with any additional information, please let me know.

Sincerely,

John P. Lewis

## FAUQUIER COUNTY OFFICE OF PLANNING

Third Floor Court and Office Building

40 Culpeper Street

Warrenton, Virginia 22186

(703) 347-8701

January 31, 1991

Mr. Richard F. Lewis, Jr.  
Post Office Drawer 3300  
Winchester, Virginia 22601

RE: Special Exception  
Number SE90-S-18

Dear Mr. Lewis:

This letter will serve as your formal notification that the Fauquier County Board of Supervisors at their January 15, 1991 public meeting approved the above-referenced Special Exception with the following conditions:

1. Compliance with all FCC regulations.
2. Lighting to be the minimum required by law.
3. Antennas limited to those necessary for radio transmission purposes.
4. Tower to be used for back up purposes only or if used as primary, the existing tower to be for back up only.
5. Height limited to that requested.
6. The County or other governmental agency be permitted to utilize the tower for emergency communications network.
7. Limit the number of whip antennas to no more than four.
8. No satellite dishes.



Mr. Richard F. Lewis, Jr.

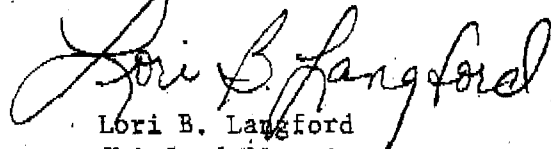
Page 2

January 31, 1991

Please be further advised that pursuant to Article 5-014 of the Fauquier County Zoning Ordinance "the activity [being authorized herein] shall be established and construction authorized shall be diligently prosecuted within... one year after the effective date of [this special] exception. If construction has not commenced within a period of one (1) year, unless an extension is granted, such special exception shall automatically expire without notice."

If this office can be of any further assistance, please do not hesitate to contact us.

Very truly yours, ...

  
Lori B. Langford  
Chief of Planning

LBL/bi